

Mark Kleiman (SBN 115919)
mark@krlaw.us
KLEIMAN / RAJARAM
12121 Wilshire Blvd., Ste. 810
Los Angeles, CA 90025
Tel: 310-392-5455 / Fax: 310-306-8491

Collin Poirot (NY 5673405)
(*pro hac vice*)
cpoirot.law@gmail.com
2603 Oak Lawn, Suite 300
Dallas TX 75219
214-392-2281

Attorneys for Defendants
CODEPINK WOMEN FOR PEACE
CODEPINK ACTION FUND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONEN HELMANN, on behalf of all
others similarly situated,

Plaintiff,

v.

CODEPINK WOMEN FOR PEACE, a
California entity, CODEPINK ACTION
FUND, a California entity; and DOES 1-
100,

Defendants.

CASE NO: 2:24-cv-05704-SVW-PVC

Honorable Stephen V. Wilson
Courtroom 10A

DEFENDANTS CODEPINK WOMEN
FOR PEACE AND CODEPINK ACTION
FUND NOTICE OF MOTION AND
MOTION FOR CERTIFICATION OF AN
INTERLOCUTORY APPEAL UNDER 28
U.S.C. § 1292(b)

Judge: Hon. Stephen V. Wilson
Hearing Date: September 29, 2025
Hearing Time: 1:30 PM
Place: Courtroom 10A

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on September 29, 2025, at 1:30 p.m. or as soon
3 thereafter as this matter may be heard in Courtroom 10A of the above-entitled Court
4 located at First Street Courthouse, 350 W. 1st Street, Courtroom 10A, 10th Floor, Los
5 Angeles, CA 90012, Defendants CODEPINK WOMEN FOR PEACE and CODEPINK
6 ACTION FUND, will and hereby do move the Court for Certification of an Interlocutory
7 Appeal Under 28 U.S.C. § 1292(b).

8 This motion is based upon this Notice of Motion, the attached Memorandum of
9 Points & Authorities, the files and records in the case, and any evidence or argument that
10 may be presented at a hearing on this matter.

11 Respectfully submitted,

12 Dated: August 25, 2025

KLEIMAN / RAJARAM

13
14
15 By: /s/ Mark Kleiman

16 Mark Kleiman

17
18 Attorneys for Defendants
19 CODEPINK WOMEN FOR PEACE
20 CODEPINK ACTION FUND
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF AUTHORITIES	4
MEMORANDUM OF POINTS AND AUTHORITIES	6
I. INTRODUCTION	6
II. BACKGROUND.....	7
A. 18 U.S.C. § 248(a)(2) Requires Specific Intent to Injure, Intimidate, or Interfere with a Person Because of Their Exercise of Religious Freedom.....	7
B. Applying the Correct Pleading Requirements Would Be Dispositive and Require Dismissal	10
C. Applying the Incorrect Scierter Requirement May Well Necessitate a Retrial if This is Not Corrected Now	11
III. ARGUMENT	11
A. Applicable Standards for Interlocutory Appeals	11
B. Certification is Merited So Long as There Are Substantial Grounds for a Difference of Judicial Opinion, Whether or Not Jurists Have Already Disagreed	11
C. An Immediate Appellate Holding Will Likely Terminate the Litigation, But it Need Not Do So for Certification to Be Merited.....	12
IV. CONCLUSION	13
CERTIFICATE OF SERVICE	14
L.R. 11-6.2 CERTIFICATE OF COMPLIANCE	15

TABLE OF AUTHORITIES

Page(s)

<u>Arizona v. Ash Grove Cement Co.,</u>	
459 U.S. 1190 (1983)	12
<u>Biederman v. FCA US LLC,</u>	
2025 U.S.Dist. LEXIS 83591, 2025 WL 1266907	
(N.D. Cal., May 1, 2025)	12
<u>Church of Scientology of California v. U.S. Dept. of Justice,</u>	
612 F.2d 417 (9th Cir. 1979)	8
<u>Couch v. Telescope, Inc.,</u>	
611 F.3d 629 (9th Cir. 2011)	11
<u>In re Cement Antitrust Litig.,</u>	
673 F.2d 1020 (9th Cir. 1982)	12
<u>New Beginnings Ministries v. George,</u>	
2018 WL 11378829, *3 (S.D. Ohio, Sept. 28, 2018)	<i>passim</i>
<u>Russello v. U.S.,</u>	
464 U.S. 16 (1983)	8
<u>Sharpe v. Conole,</u>	
123 F.Supp.2d 87 (N.D.N.Y. 2000)	7,8
<u>U.S. v. American Trucking Ass'ns,</u>	
310 U.S. 534, 543 (1940)	8

STATUTES

18 U.S.C. §248..... *passim*

28 U.S.C. §1292(b) *passim*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

One question that controls whether Plaintiff can claim the religious exercise protections of the FACE Act should be certified for immediate appeal under 28 U.S.C. §1292(b). CodePink respectfully moves for certification because resolving this question will materially affect the outcome of the litigation. The FACE Act is a specific intent statute that Defendant contends requires a showing that any prohibited acts were undertaken to intentionally interfere with Plaintiff's exercise of his religious freedom.

Whether the specific intent standard requiring that Plaintiff show CodePink intended to intimidate or interfere with him because of his religion is a controlling question upon which reasonable jurists can disagree. New Beginnings Ministries v. George, 2018 WL 11378829, *3 (S.D. Ohio, Sept. 28, 2018) (a violation of the FACE Act's religious exercise subsection therefore requires that Defendants act "*because* [Plaintiff] is exercising or is seeking to exercise his or her religious freedom"). Although there is room for disagreement, there is, frankly, no law conflicting with New Beginnings. The record in this case cites no prior decisions in which the religious exercise subsection of the act was applied without requiring, as an element of the offense, that the defendants acted *because* of the plaintiff's religious exercise. Yet in its two prior orders, this Court construed the FACE Act as a general intent statute, rather than as a specific intent offense. If a specific intent standard were applied, Plaintiff would be unable to meet the burden and the claim would be subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This central issue could be quickly resolved by the Ninth Circuit if certification is granted. Resolution will advance the termination of this litigation: If Plaintiffs are unable to plausibly allege that CodePink had an anti-Semitic motive, the FACE Act claim must be dismissed. And that is the only claim remaining.

1 The Court should therefore certify this question for immediate appeal under 28
2 U.S.C. § 1292(b).

3 **II. BACKGROUND**

4 Because 18 U.S.C. § 248(a)(2) is a specific intent crime, and Plaintiff must
5 allege facts plausibly showing CodePink acted *because* of Plaintiff's *exercise of*
6 *religious freedom*. In its two prior orders, this Court construed the FACE Act as a
7 general intent statute, rather than as a specific intent offense. As a result, the Court did
8 not require Plaintiffs to plausibly allege that CodePink acted *because* of Plaintiffs'
9 religious exercise. Dkt. 131 at 17, 24-5, fn. 2. If a specific intent standard, were
10 applied, Plaintiff would be unable to meet his burden and the claim would be subject
11 to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

12 **A. 18 U.S.C. § 248(a)(2) Requires Specific Intent to Injure, Intimidate, or**
13 **Interfere with a Person Because of Their Exercise of Religious Freedom**

14 A claim for relief under 18 U.S.C. § 248(a)(2) requires Plaintiff to allege facts
15 plausibly showing that Defendants intended to injure, intimidate, or interfere with him
16 *because* of his exercise of freedom of religion. New Beginnings Ministries v. George,
17 2018 WL 11378829, *3 (S.D. Ohio, Sept. 28, 2018) (a violation of the FACE Act's
18 religious exercise subsection therefore requires that Defendants act "*because*
19 [Plaintiff] is exercising or is seeking to exercise his or her religious freedom"). The
20 record in this case cites no prior decisions in which the religious exercise subsection
21 of the act was applied without requiring, as an element of the offense, that the
22 defendants acted *because* of the plaintiff's religious exercise.

23 Although the word "because" does not appear in the plain text of the religious
24 freedom subsection of the FACE Act, the statute must nonetheless be construed as a
25 specific intent offense in order to avoid absurd results. *See e.g., Sharpe v. Conole*, 123
26 F.Supp.2d 87, 90-1 (N.D.N.Y. 2000) (considering the reproductive health subsection
27
28

1 of the FACE Act and finding that “Plaintiff’s interpretation of FACE’s *mens rea*
2 standard (such that one only need show obstruction to prove intent) could lead to
3 ridiculous results”); Sharpe v. Conole, 386 F.3d 482, 484 (2d Cir. 2004) (considering
4 the reproductive health subsection of the FACE Act and finding that intent to injure,
5 intimidate, or interfere, by itself will not suffice to make out a claim under §
6 248(a)(1). There must also be a showing that the injurious intent existed *because of*
7 the motivation specified by the statute”). “The intent to injure, intimidate, or interfere
8 is a separate intent requirement that must also be proved by a FACE Act plaintiff. But
9 that intent alone will not suffice to make out a claim under § 248(a)(1) without a
10 showing that the intent to injure, intimidate, or interfere existed because of the
11 motivation specified by the statute”).

12 Although Sharpe interpreted the FACE Act’s reproductive clinic subsection, the
13 same logic applies here: Plaintiff’s interpretation would create a private cause of
14 action any time construction blocked a place of worship’s entrances to repair the
15 building; volunteer firefighters ordered congregants to evacuate for a fire drill; a
16 nearby private event restricted public access to the building; a specific individual
17 congregant was excluded due to prior misconduct; or in a litany of other common
18 scenarios. Only a specific intent *mens rea* can protect the Act from absurd results.

19 Although Congress’s use of a word in one subsection of a statute but not
20 another is initially presumed to be intentional, Russello v. U.S. 464 U.S. 16 (1983),
21 where a statute’s plain text produces absurd results, the Court must look to the
22 legislative history of the act to determine the correct interpretation of the text. Church
23 of Scientology of California v. U.S. Dept. of Justice, 612 F.2d 417, 422 (9th Cir.
24 1979) (quoting U.S. v. American Trucking Ass’ns, 310 U.S. 534, 543 (1940) (when
25 the plain text of a statute “led to absurd or futile results... this Court has looked
26 beyond the words to the purpose of the act. Frequently...even when the plain meaning
27
28

1 did not produce absurd results but merely an unreasonable one plainly at variance with
2 the policy of the legislation as a whole, this Court has followed that purpose, rather
3 than the literal words.” (internal quotations omitted)).

4 In this case, the FACE Act’s legislative history makes it clear that the religious
5 expression subsection was intended to require a specific intent *mens rea*. As one
6 federal court noted, “there are no legislative findings related to the religious liberties
7 provision...in an official congressional report. Instead, all that exist are Senator
8 Hatch's statements made when he proposed the religious access amendment.” New
9 Beginnings Ministries v. George, 2018 WL 11378829, *6 (S.D. Ohio, Sept. 28, 2018).
10 Senator Hatch (the amendment’s sponsor), explained: “the religious liberty
11 amendment that I am offering is very straightforward. It would ensure that the first
12 amendment right of religious liberty receives the same protection from interference
13 that [FACEA] would give abortion...Through this amendment, religious liberty would
14 also be protected against private intrusion-in exactly the same way that [FACEA]
15 would protect abortion.”139 Cong. Rec. S15660, 1993 WL 470962 (Nov. 3, 1993).

16 The only legislative history clearly dictates that the religious exercise
17 subsection must be construed as equal in scope to the reproductive health
18 subsection—that it should be interpreted and applied “exactly the same way.” There is
19 no record of any congressional debate or discussion that would support construing one
20 subsection as a specific intent violation, and the second as applicable to any and all
21 conduct that obstructs entry to any space used for religious worship, for any reason
22 whatsoever.

23 The FACE Act’s religious liberties subsection must be construed as a specific
24 intent offense for another reason as well, which is that the motive is a key element
25 distinguishing protected and innocent conduct from culpable conduct. A violation of
26 the FACE Act’s religious exercise subsection therefore requires that Defendants act
27

1 “*because* [Plaintiff] is exercising or is seeking to exercise his or her religious
2 freedom.” New Beginnings Ministries v. George, 2018 WL 11378829 *3.

3 This Court therefore erred when it construed 18 U.S.C. 248(a)(2) as a general
4 intent offense, and as a result did not require Plaintiff to plausibly allege that
5 CodePink actions were motivated by an intent to keep the plaintiff from exercising his
6 freedom of religion. This is material and dispositive here because Plaintiff has failed
7 to plausibly allege such a motive, and has in fact admitted the motive is not present.

8 **B. Applying the Correct Pleading Requirements Would Be Dispositive and**
9 **Require Dismissal**

10 Plaintiff has repeatedly failed to plausibly allege Defendants protested the real
11 estate sale event *because* of Plaintiff’s *exercise of religious freedom*. Plaintiff does not
12 allege CodePink even mentioned prayer, worship, Jews or Judaism, called for
13 violence, physical force, or intimidation. Plaintiff’s only specific facts pled against
14 CodePink are that the organization announced a “Mega Zionist Real Estate Event,”
15 and encouraged supporters to “HELP US ADVOCATE THE STOP OF HOMES
16 BEING SOLD ON STOLEN PALESTINIAN LAND.” and that one single slide
17 featured an inverted red triangle with the synagogue’s address. TAC ¶¶ 144-5, 321.
18 No pled facts plausibly show CodePink intended to injure, restrict movement, or
19 threaten violence against people coming to exercise religious freedom.

20 Plaintiff’s own footnoted sources in the SAC show that the real estate event
21 advertisement never mentioned religion, prayer, worship, nor even *Aliyah*. The event
22 is described as a real estate opportunity, with discounts offered for participants. FAC
23 n. 11, video. Nothing in the advertisement suggests the event was religious, and
24 sources in the TAC show that Defendants were *unaware*, believing that “no religious
25 services were scheduled” at the time. TAC ¶ 328. At most, Plaintiff’s allegations
26
27
28

1 might show CodePink intended to advocate against the real estate sale, and to oppose
2 an ongoing genocide.

3 The facts pled make it impossible for Plaintiff to plausibly allege that CodePink
4 intended to injure, intimidate, or interfere with them because of his religious exercise,
5 and an application of the correct pleading requirement of specific intent would be
6 dispositive in this case.

7 **C. Applying the Incorrect *Scienter* Requirement May Well Necessitate a**
8 **Retrial if This is Not Corrected Now.**

9 Continuing to construe §248(a)(2) as a general intent statute will lead to a set of
10 jury instructions radically different from the instructions for specific intent offenses.
11 If this error is not corrected until a post-trial appeal the parties and this Court will have
12 gone through extensive pretrial discovery and a contentious trial for nothing, and
13 retrying the case after a Ninth Circuit correction will only increase the costs to the
14 parties and the drain on judicial resources.

15 **III. ARGUMENT**

16 **A. Applicable Standards for Interlocutory Appeals**

17 Under 1292(b), a district court may certify a matter for immediate
18 review if it meets three standards. (1) It must be a ‘controlling question of law’; (2)
19 there must be substantial grounds for difference of opinion; and (3) immediate
20 resolution may materially affect the outcome of the litigation.

21 **B. Certification is Merited So Long as There Are Substantial *Grounds***
22 **for a Difference of Judicial Opinion, Whether or Not Jurists Have**
23 **Already Disagreed.**

24 Certification is justified if a novel and difficult question of first impression is
25 presented. Couch v. Telescope, Inc. 611 F.3d 629, 633 (9th Cir. 2011). This is so even
26 if the disagreement is nascent, rather than in full bloom. This Court, for example, did
27

1 not expressly distinguish or disagree with New Beginnings Ministries v. George but
2 the difference of opinion is manifest, and that difference is enough. Biederman v.
3 FCA US LLC, 2025 U.S. Dist. LEXIS 83591, 2025 WL 1266907 (N.D. Cal., May 1,
4 2025)

5 **C. An Immediate Appellate Holding Will Likely Terminate the**
6 **Litigation, But it Need Not Do So for Certification to Be Merited.**

7 If the Court of Appeals agrees with CodePink that the FACE Act's specific intent
8 standard should be applied here, the abundant evidence, acknowledged by Plaintiff, that
9 the event was advertised as a real estate promotion, and Plaintiff's admission that
10 CodePink protested it as one, should certainly resolve the case.

11 But even if it does not, and Plaintiff alleges the requisite *mens rea*, the case will
12 have been changed forever. A controlling question of law need not terminate the
13 litigation so long as it materially affects the outcome of the litigation in the district court.
14 28 U.S.C. §1292(b); In re Cement Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982),
15 *aff'd sub nom.* Arizona v. Ash Grove Cement Co., 459 U.S. 1190 (1983).

16 Even if a Ninth Circuit ruling did not bar Plaintiff from subsequently pleading the
17 requisite *mens rea*, the absence of facts supporting such a charge would at least lead to
18 termination on summary judgement.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 **IV. CONCLUSION**

2 Because the three statutory elements are met here, certification is
3 warranted. The motion for certification of an interlocutory appeal should be granted.

4 Respectfully Submitted,

5 KLEIMAN RAJARAM

6
7 Dated: August 25, 2025

/s/ Mark Kleiman

8 Mark Kleiman (SBN 115919)

9 mark@krlaw.us

10 KLEIMAN / RAJARAM

11 12121 Wilshire Blvd., Ste. 810

12 Los Angeles, CA 90025

13 Tel: 310-392-5455 / Fax: 310-306-8491

14 Collin Poirot (NY 5673405)

15 (pro hac vice)

16 cpoirot.law@gmail.com

17 2603 Oak Lawn, Suite 300

18 Dallas TX 75219

19 214-392-2281

20 Attorneys for Defendants

21 CODEPINK WOMEN FOR PEACE

22 CODEPINK ACTION FUND

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California by using the CM/ECF System.

Participants in the case who are registered CM/ECF Users will be served by the CM/ECF System.

Dated: August 25, 2025

/s/ Mark Kleiman

Mark Kleiman

L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant CODEPINK certifies that this
brief contains 2,102 words, which complies with the word limit of L.R. 11-6.1.

KLEIMAN RAJARAM

Dated: August 25, 2025

/s/ Mark Kleiman

Mark Kleiman

Attorney for Defendants
CODEPINK WOMEN FOR PEACE
CODEPINK ACTION FUND